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recovered in 1896 is barred by 1918 as to the one remaining in the state, where the original execution was returned no property found, and a second execution issued in 1900 was never returned, notwithstanding the other copartner removed to and was residing in a foreign state when the second execution was issued; there being no attempt on the part of the remaining copartner to obstruct or delay collection of the judgment.

2. Mortgages (§ 424*)—Enforcement Denied after 20 Years' Delay.—Twenty years' delay in enforcing a deed of trust after accrual of right of action will bar the same, Code 1904, § 2934, making such delay an absolute bar to any proceeding to enforce a deed of trust or mortgage.

[Ed. Note.—For other cases, see 10 Va.-W. Va. Enc. Dig. 115.]

3. Limitation of Actions (§ 85 (2)*)—Absence of Debtor Does Not Bar Running of Statute against Mortgage.—The absence of a debtor from the state creates no obstruction of the right to enforce a deed of trust on property situated within the state, and hence will not, under Code 1904, § 2933, excuse the effect of 20 years' delay in enforcement which is made a bar by section 2935 to any action for enforcing such obligation.

[Ed. Note.—For other cases, see 9 Va.-W. Va. Enc. Dig. 419.]

4. Vendor and Purchaser (§ 172*)—Liability for Interest on Deferred Payments.—Where a purchaser went into possession under an agreement that a deferred payment should be made when title to the property had been satisfactorily cleared, held, that the purchaser who retained the money was bound to pay interest on the amount from the time he went into possession, particularly where the title was marketable at the time he went into possession.

[Ed. Note.—For other cases, see 13 Va.-W. Va. Enc. Dig. 513.]

Appeal from Circuit Court, Tazewell County.

Suit by W. E. Jenkins, against one Cohen. There was a decree for complainant, and defendant appeals. Affirmed.

J. Powell Royall, of Tazewell, and *L. J. Holland*, of Bluefield, W. Va., for appellant.

Butts & Minter, of Logan, W. Va., and *T. C. Bowen*, of Tazewell, for appellee.

BLACKSBURG MINING & MFG. CO. *v.* BELL et ux.

Sept. 17, 1919.

[100 S. E. 806.]

1. Mines and Minerals (§ 55 (8)*)—Ambiguous Description of Mineral Deed Jury Question.—Question whether deed, conveying

*For other cases see same topic and KEY-NUMBER in all Key-Numbered Digests and Indexes.

minerals on land lying "north of Toms creek and on Brush mountain," described only such land as was on the mountain or included a tract of about 100 acres lying between the creek and the mountain, held for jury; the description being ambiguous and the question being one of intention as to actual location of disputed line.

[Ed. Note.—For other cases, see 9 Va.-W. Va. Enc. Dig. 829; 4 Va.-W. Va. Enc. Dig. 427.]

2. Mines and Minerals (§ 55 (8)*—Burden of Proof on Plaintiff to Locate Lands Claimed by It.)—In action of ejectment by plaintiff claiming under mineral deed against successors of grantors, involving issue of whether land in dispute was included in description, burden was on plaintiff to locate land claimed by it and to show that such land was within the lines of the title papers upon which it relied.

[Ed. Note.—For other cases, see 4 Va.-W. Va. Enc. Dig. 904.]

3. Adverse Possession (§ 80 (2)*—Deed Not Color of Title to Minerals on Land Not Included in Description.)—Where there was a dispute as to whether a certain tract of land was included in ambiguous mineral deed description, grantor's successors could not acquire by adverse possession title to minerals on the land of which they were not in actual possession; they having no color of title if deed did not cover land.

[Ed. Note.—For other cases, see 1 Va.-W. Va. Enc. Dig. 206.]

4. Adverse Possession (§ 68*—Beyond Actual Occupancy Must Be under Color of Title.)—Adverse possession to extend beyond limits of actual occupancy must be under color of title; mere claim of title being insufficient.

[Ed. Note.—For other cases, see 1 Va.-W. Va. Enc. Dig. 208.]

5. Adverse Possession (§§ 71 (2), 80 (2)*—Instrument to Be Color of Title Must Designate Land with Certainty.)—It is immaterial that the title paper relied upon as color of title is defective, or even void as passing title, but the paper to constitute color of title must designate the land with certainty; the principal office of color of title being to define boundaries.

[Ed. Note.—For other cases, see 1 Va.-W. Va. Enc. Dig. 206.]

6. Evidence (§ 258 (1)*—Powers of President to Bind Corporation by Declarations.)—In absence of proof to the contrary, president of a corporation is not presumed to have authority to bind corporation by declarations as to claims of the corporation with respect to location of disputed boundary.

[Ed. Note.—For other cases, see 3 Va.-W. Va. Enc. Dig. 568; 4 Va.-W. Va. Enc. Dig. 340; 10 Va.-W. Va. Enc. Dig. 577.]

7. Evidence (§ 244 (2)*—Declarations of President of Corporation to Boundary Dispute Binding.)—Where president of corporation

*For other cases see same topic and KEY-NUMBER in all Key-Numbered Digests and Indexes.

was in general charge of the lands of the corporation and actively looking after the establishment of boundaries, his declarations as to what the corporation claimed with reference to a disputed boundary line was binding on corporation.

[Ed. Note.—For other cases, see references under 6 *supra*.]

8. Adverse Possession (§ 31*)—Notice to Lessee by Defendants Not in Presence of Representative of Plaintiff.—In ejectment, where defendants claimed title by adverse possession, evidence of a conversation in which defendant told plaintiff's lessee that the land belonged to the defendants was inadmissible, where conversation was not in presence of any agent or representative of plaintiff, and did not appear to have been communicated to plaintiff, and where there was no evidence that lessee was plaintiff's agent, since notice to lessee was not notice to plaintiff.

[Ed. Note.—For other cases, see 1 *Va.-W. Va. Enc. Dig.* 226.]

9. Witnesses (§ 158*)—Competency as to Transaction with Plaintiff through Deceased Agent.—In ejectment involving question of location of boundary under description in deed and also question of whether defendant had acquired title by adverse possession, incompetency of defendant to testify as to compromise agreement with plaintiff through its deceased agent, under Code 1904, § 3348, did not render witness incompetent to testify as to adverse possession; the two matters being separate and distinct and neither being collateral to the other.

[Ed. Note.—For other cases, see 13 *Va.-W. Va. Enc. Dig.* 951.]

10. Boundaries (§ 36 (5*)—Notes of Survey Admissible.—In ejectment involving boundary dispute, a paper in handwriting of deputy county surveyor, containing notes of survey which evidence showed was made for purpose of locating division line in controversy in the presence and under the supervision of plaintiff's agent and defendant, held admissible.

[Ed. Note.—For other cases, see 2 *Va.-W. Va. Enc. Dig.* 607, 608.]

Error to Circuit Court, Montgomery County.

Action by the Blacksburg Mining & Manufacturing Company against William A. Bell and wife. Judgment for defendants, and plaintiff brings error. Reversed and remanded, with directions.

Hall, Wingfield & Apperson, of Roanoke, for plaintiff in error.

Harless & Colhoun, of Christiansburg, for defendants in error.

*For other cases see same topic and KEY-NUMBER in all Key-Numbered Digests and Indexes.